

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:11cv388-MOC**

**JOSEPH KLAJULAK and AMI JACKSON,  
On Behalf of Themselves and Others Similarly  
Situoted,**

**Plaintiffs,**

**Vs.**

**AMERICAHOMEKEY, INC., et al.,**

**Defendants.**

**ORDER**

**THIS MATTER** is before the court on plaintiffs' Motion to Dismiss Defendant Steven Chiou. Here, plaintiffs appear to have reached a settlement of their claims with Defendant Chiou and seek dismissal of their claims against him with prejudice in accordance with Rule 41(a)(2), Federal Rules of Civil Procedure.

From the outset, there has been at least one decision within the Western District of North Carolina casting doubt on whether Rule 41(a)(2) is a proper vehicle for dismissing less than an entire action. See Gahagan v. North Carolina Hwy. Patrol, 1:00cv52 (W.D.N.C. Oct. 25, 2000). A more recent decision from the Court of Appeals for the Fourth Circuit suggests that Rule 41(a)(2) be applied less rigidly than suggested in Gahagan:

Because Rule 41(a)(2) provides for the dismissal of "actions" rather than claims, it can be argued that Rule 15 is technically the proper vehicle to accomplish a partial dismissal of a single claim, but similar standards govern the exercise of discretion under either rule. See 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1479 (2d ed.1990); see also *Deasy*, 833 F.2d at 40 (noting that the "disposition of a motion to amend is within the sound discretion of the district court.").

Miller v. Terramite Corp., 114 Fed.Appx. 536, 540 (4<sup>th</sup> Cir. 2004). Having considered plaintiffs' motion and reviewed the pleadings and determined that such dismissal is based on terms the court considers proper in accordance with Rule 41(a)(2), Federal Rules of Civil

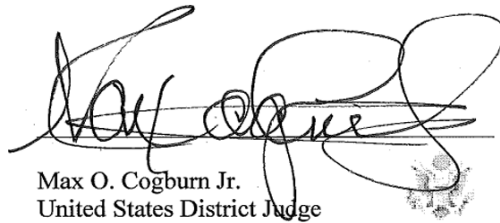
Procedure, and that no cross claims have been asserted against this defendant, the court enters the following Order.

**ORDER**

**IT IS, THEREFORE, ORDERED** that plaintiffs' Motion to Dismiss Defendant Steven Chiou (#51) is **GRANTED**, and defendant Steven Chiou is **DISMISSED** from this action with prejudice in accordance with Rule 41(a)(2).

**IT IS FURTHER ORDERED** that Defendant Chiou's Motion to Dismiss (#49) is **DENIED** as moot.

Signed: April 10, 2012



Max O. Cogburn Jr.  
United States District Judge